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EXAMINER

PACKARD, BENJAMIN J

ART UNIT

PAPER NUMBER

1612

MAIL DATE

DELIVERY MODE

04/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Applicants' arguments, filed 01/24/2005, have been fully considered and they are deemed to be persuasive in light of the amended claims dated 01/24/2008. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

Claim Objections

Claims 13-14 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Specifically, the range of retinoic acid of claim 12 has been amended to "greater than 5% and up to 20% by weight", but claims 13 and 14 include ranges below 5%. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

Claims 12-20 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dole et al (US Pregrant Pub 2003/0044366, See PTO 1449 dated 10/25/2007).

The instant claims are related to a cosmetic composition in the form of a self-curing mask containing retinoic acid and a hydrophilic polymer, ie. polyvinyl alcohol, said composition being an aqueous composition.

Dole et al. teaches a composition for forming a cosmetic mask comprising at least one colorant and silica, wherein the composition is combined with water. The composition of the invention may include anti-acne agents, for example retinoic acid and anti-aging agents, for example tretinoin in the amount of about 5%, which when interpreted broadly includes a reasonable range above 5%. If a peel off mask is desired, the composition of the invention may include a polymer. A typical polymer used in the

Art Unit: 1612

invention includes polyvinyl alcohol. (See claim 1, and page 2, lines 25-29; page 3, lines 27-29; and page 4, lines 45-48).

Applicants previously argued that Dole et al does not disclose the addition of a cosmetic cream base. Also that Dole et al discloses a composition containing silica and a colorant.

The instant specification fails to define "cosmetic cream base", therefore when read broadly, may include any moisturizing composition. Dole et al teaches the addition of nonionic surfactants, such as fatty alcohol acid in the amounts of 0.5% and 1%. Moisturizers employed in cosmetics include fatty acid and fatty alcohols, as shown by Venkltaraman et al (U.S. 5,871,762) at column 3 lines 7-19.

Also, where a claim is not closed, i.e. "consisting of", additional components may be included in the composition. Therefore, the addition of silica and colorant to the mask of Dole et al is irrelevant.

It would have been obvious to one of ordinary skill in the art to add the various components as taught by Dole et al to produce a mask of about 5% retinoic acid, which may include amounts greater than 5% retinoic acid, with fatty alcohol acid that act as a cosmetic cream base, or moisturizing agents.

Conclusion

No claims allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 1612

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin Packard whose telephone number is 571-270-3440. The examiner can normally be reached on M-F 8-3:45 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1612

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/Benjamin Packard/
Patent Examiner, Art Unit 1612

/Frederick Krass/
Supervisory Patent Examiner, Art Unit 1612